IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Gena Ram & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 300/2005
against the order dated 20-1-2005 passed
by the Sessions Judge, Pali, in Cri. Revision
No.91/2003.

...

Date of Order: August 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Suresh Kumbhat, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 Cr.P.C. is directed against the order dated 20-1-2005 passed by the Sessions Judge, Pali (for short, "the Revisional Court" hereinafter) in Criminal Revision No.91/2003, whereby the revision petition filed by the petitioners against the order dated 16-5-2000 passed by the Additional Chief Judicial Magistrate (Environment), Pali (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor. Carefully gone through the orders passed by the courts below.

It is contended by the learned counsel for the

petitioners that so far as the present petitioners are concerned, the police filed negative Final Report, however, the trial Court took cognizance of the offences and issued process against the petitioners without assigning any reason for disagreeing with the conclusion arrived at by the police and, therefore, the impugned order taking cognizance is bad in law. Learned counsel has relied on a decision of this Court in Bhagwan Sahai Khandelwal & ors. Vs. State of Rajasthan & Anr., 2006 (2) WLC (Raj.) 239.

It appears from the impugned orders that on a report lodged by the complainant, the police investigated the matter and filed Challan against co-accused Prabhu Ram in Crime Report No. 28/2000; however, no Challan was filed against the present petitioners though in the FIR and the statements of witnesses, there had been specific allegation against them for certain offences. The trial Court perused the statements of complainant Durga and witnesses Mohan Lal, Gheesa Lal, Narendra Singh, Dev Narain, Achal Singh, Hansa Ram, Samsuddin, Ummed Ram and Ram Niwas recorded under Section 161 Cr.P.C. and came to the conclusion that on the basis of police papers produced before it, prima facie the offences under Sections 147, 498-A, 406, 452, 323 IPC are made out against the petitioners and accordingly took cognizance of the aforesaid offences and issued the process against the petitioners. The Revisional Court, on examination of the record of the trial Court,

came to the conclusion that the conclusion arrived at by the trial Court are based on the evidence collected by the police during investigation, the trial Court did not commit any error and consequently dismissed the revision petition.

In Bhagwan Sahai Khandelwal & ors. Vs. State of Rajasthan & Anr. (supra), this Court held that the order taking cognizance is bad as it is a non-speaking order which suffers from the vires of non-application of mind, as also the trial Magistrate has not assigned any reason disagreeing with the findings of the investigating agency. The judgment relied on by the learned counsel for the petitioners is of no help to the petitioners because in the instant case, the trial Court, as noticed above, has carefully gone through the statements of as many as ten witnesses and from the statements of those witnesses, came to the conclusion that prima facie the offences against the present petitioners, as noticed above, are made out.

Even it is not necessary that the trial Court accept the conclusion arrived at by the police. In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Surpreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the

said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

Keeping in view the decision of the Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan (supra), in my view, the trial Court was justified in taking cognizance of the offences and issuing process against the present petitioners, as also the impugned order of the Revisional Court also does not suffer from any error, illegality or perversity warranting interference in the inherent jurisdiction.

The criminal miscellaneous petition is, therefore, dismissed. The interim order passed on 6-9-2005, and extended from time to time, is vacated and the stay petition stands dismissed.

(H.R. PANWAR), J.

mcs